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court seem to decide that it was incumbent upon the trial court to call for outside evidence of the marriage, as merely calling the witness to the stand, and thus compelling the defendant to object, was using the wife as a witness against her husband. This case seems to go much beyond any previous decision and there is much sound logic in the dissenting opinion of Henderson J., who says that only disqualifying facts were shown, and that this was not using the wife against the husband. No cases in point are cited in either opinion, and it is perhaps a case of first impression. For a general discussion of the time and mode of showing disqualification. See ROSCOE'S CR. EV., p. 141; TAYLOR ON EV. § 1393; JONES ON EV. § 796; THOMPSON ON TRIALS, § 364. See also *Seeley v. Engell*, 17 Barb. (N. Y.) 530; *LeBarron v. Redman*, 30 Me. 536.

In regard to competency of a wife to testify against her husband and his rights to suppress her testimony. See II MICH. LAW REV. 230.

DAMAGES—EXEMPLARY DAMAGES WHERE ACTUAL DAMAGE PURELY NOMINAL.—Plaintiff alleged that he had an arrangement with defendants, who were hotel keepers, for the use of a room in their hotel from time to time as he had occasion to occupy it, and had deposited a sum of money with defendants to be used in paying the rent of the room and for other purposes; that while this sum was unexhausted he applied for a room and was assigned one of which he took possession; that during his temporary absence from the room defendants locked it up with his wearing apparel and personal effects therein, and refused to allow him to re-enter or occupy that room or any other room in the hotel; that he was thus forcibly ejected from the room, in the presence of other persons, and thereby caused to suffer humiliation and loss of standing, reputation and credit. Plaintiff also alleged that defendants maliciously refused to return him, upon demand, the balance of his deposit. He sought in his pleadings to recover both actual and exemplary damages. He made no claim for the goods locked up in the room. The jury awarded him a verdict upon which judgment was rendered for the amount of the deposit unused and \$200 exemplary damages. On appeal, *Held*, that the judgment could not be sustained. *Malin v. McCutcheon* (1903), —Tex. Civ. App. —, 76 S. W. Rep. 586.

The ground for reversal was that the facts alleged respecting the ejection from the room would not justify actual damages and the non-payment of the balance of the deposit would not sustain an award of exemplary damages. "It is well settled in this state," said the court, "that exemplary damages cannot in any case be recovered unless a right to actual damages is shown." "No judgment for exemplary damages may be allowed to stand unless some sum in actual damages is also found. *Carson v. Texas Inst. Co.* (Tex. Civ. App.) 34 S. W. 762; *Jones v. Matthews*, 75 Tex. 1, 12 S. W. 823. Where the actual damages are reduced by the proof to a mere nominal sum, there is generally no ground for the recovery of punitive damages. SUTHERLAND ON DAMAGES, Vol 1, p. 748." Without stopping to consider whether the court was right in holding that no ground for actual damages existed, the case is interesting for its contribution to the main question, upon which the authorities are in conflict. The chief authorities upon each side are collated in I MICHIGAN LAW REVIEW, 61, and a further reference to them is found in the same volume at page 515. The conclusion reached in the discussion referred to is against the position of the Texas cases.

DAMAGES—MEASURE OF RECOVERY FOR DEATH OF INFANT.—In an action by the father for damages for causing the death of his infant son, the lower